WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 02−037

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

General Comment

Although the proposed rule to which these comments relate is quite substantial in length, the rule appears to contain fairly repetitive procedures throughout its many chapters. Provisions in one chapter are repeated nearly identically in other portions of the rule. Accordingly, nearly identical flaws and errors are repeated throughout the rule, as well. Rather than try to identify each and every flaw or error in the rule, the following comments typically identify representative flaws and errors, often, but not always, at their first occurrence. The commission should review the entire rule to remedy similar errors throughout regardless of whether the specific comment so directs.

1. Statutory Authority

a. Section ERC 2.02 (3) provides that the scheduling of a hearing shall be held in abeyance pending the results of conciliation unless a party in interest specifically requests otherwise. However, it is noted that s. 111.07 (2) (a), Stats., provides that after a complaint is filed "the commission shall fix a time for the hearing on such complaint, which will be not less than 10 nor more than 40 days after the filing of such complaint . . . ." Is s. ERC 2.02 (3) consistent with the provision of the statute?

b. Section ERC 2.05 (11) (a) authorizes the commission or examiner to take any action which the commission or examiner considers just in relation to certain contemptuous conduct.

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What is the authority for this broad grant of power? May the commission or examiner order a jail sentence? If so, under what authority may they do so?

c. It is not clear from a reading of s. 111.70 (4) (d), Stats., where the requirement in s. ERC 11.02 (3) is derived. Is there sufficient statutory authority for the existence of this provision?

d. In s. ERC 11.09 (6), the rule provides that the commission may conduct a runoff election when the results are inconclusive. However, s. 111.70 (4) (d) 4., Stats., upon which this requirement is based, suggests that the commission may conduct a runoff election upon the request of one of the parties. Is sub. (6) consistent with the statute?

e. Section ERC 18.09 (1) indicates that the issuance of the findings of fact, conclusions of law and declaratory ruling must be issued "as soon as possible" after submission of the case. However, s. 111.70 (4) (b), Stats., appears to require that the decision be issued within 15 days of submission of the case. It would appear, therefore, that sub. (1) should require that the decision be issued within 15 days.

f. Section ERC 24.05 appears to give the commission the power to compel parties to a labor dispute to participate in mediation. However, it appears that s. 111.87, Stats., provides that neither the mediator nor the commission shall have any power of compulsion in mediation proceedings. In addition, the mediator is to bring the parties together "voluntarily." Under what authority does the commission seek to compel mediation?

g. It is noted that ch. ERC 30 does not seem to deal with the Form 1 arbitration described in s. 111.77 (4) (a), Stats. Should it?

h. Section ERC 32.04 (3) requires an arbitrator to give weight to the factors enumerated under s. 111.70 (4) (cm) 7., Stats. However, is the arbitrator also suppose to give weight to the factors enumerated in subds. 7g. and 7r. of that section?

i. In s. ERC 33.10 (5) (c), under what authority does the rule purport to authorize municipal employers to withhold, for purposes of reimbursement, overpayments of salary?

2. Form, Style and Placement in Administrative Code

a. Generally, the text of a rule-making order is divided into sequentially numbered SECTIONS. It appears that this rule repeals and recreates certain provisions, creates certain provisions, and renumbers certain provisions of the existing administrative code. Accordingly, appropriate SECTIONS and treatment clauses should be added to the rule. For example, SECTION 1 of the rule would read as follows: "Chapters ERC 1 to 4 are repealed and recreated to read:". The entire rule should be reviewed for appropriate use of treatment clauses and SECTION numbers.

b. The title of s. ERC 1.06 does not match the title listed in the table of contents for the chapter. They should match. The entire rule should be reviewed for this problem. [For example, see ss. ERC 1.07, 10.06, 20.07, 30.04, 32.07 and 33.08.]

c. In s. ERC 1.06 and elsewhere throughout the rule, notes should be included indicating the address of the commission's Madison office, and, where appropriate, the web address of the commission.

d. Section ERC 1.07 (1) (f) should not be written in sentence form in order to be consistent with the structure of the preceding paragraphs. Also, each paragraph should begin with a capital letter.

e. In s. ERC 2.04 (2) (b) and (d), the rule simply directs the reader to "see" another provision of the rule. However, the rule should more explicitly provide what must be done in these particular cases. For example, s. ERC 2.04 (2) (b) could be rewritten as follows: "(b) *To make a complaint more definite and certain*. A motion to make a complaint more definite and certain shall comply with s. ERC 2.02 (7)."

f. In s. ERC 2.09 (1), the phrase "should at the same time cause copies of the petition to be served" should be replaced by the phrase "shall, at the same time, serve copies of the petition."

g. In s. ERC 3.04 (4), a title is required because the other subsections of that section have titles. [See s. 1.05 (1), Manual.]

h. In s. ERC 4.15 (2), the introductory paragraph should be renumbered paragraph "(a)" and the subsequent paragraphs renumbered accordingly. If material does not grammatically lead into subunits, it should be separately numbered. [See, for example, ss. ERC 2.04 (2) (c) and 32.11 (1).]

i. The general treatment clause submitted with the rule-making order indicates that chs. ERC 5 to 8 are merely being renumbered. However, it is apparent that substantial revisions have been made to those chapters. Accordingly, it would appear that the treatment clause should indicate that chs. ERC 5 to 8 are repealed and recreated. Also, see comment a., above.

j. Section ERC 5.03 (2), needs an introductory provision consisting of a statement similar to the following: "A request for arbitration shall include all of the following:".

k. The last sentence of s. ERC 5.04 (1) does not appear to belong in its current location. Perhaps it would be more appropriately placed in sub. (2).

l. Section ERC 5.05, and other provisions of the rule, suggests that the Code of Professional Responsibility for Arbitrators of Labor Management Disputes is to be followed in certain arbitration proceedings. A date-specific edition of the code should either be reproduced in the rule or, pursuant to s. 2.08, Manual, should be incorporated into the rule by reference. Future, amended editions of the code can, by rule, replace earlier editions. In addition, the last sentence of the section refers to "hearings" conducted by commission-employed arbitrators and

the rest of the section refers to "proceedings." Is there a difference? If not, consistent terminology should be used.

m. Section ERC 9.07 (2) should be renumbered as pars. (a) to (c). In addition, the statutory reference to s. 111.70 (4) (b), Stats., is incorrect. It appears that the rule should cross-reference "s. 227.41, Stats."

n. The title of ch. ERC 10 is the same as the title of ch. ERC 1. Can the titles to these provisions be made more precise?

o. In s. ERC 12.02 (4) (a), it appears that the last sentence is misplaced. That sentence should, it appears, be placed in par. (b). In addition, this sentence should be rewritten substantially as follows: "The commission may not refund fees based upon a withdrawal of a complaint."

p. Section ERC 13.03 (3) (d) appear to rely on the title to indicate when the substantive provisions apply. However, the titles are not part of the substantive provision of the rule. Therefore, the substantive provisions need to contain language indicating when the remainder of the substantive provision applies. In addition, the titles to the subdivisions should not be italicized and should be enclosed in single quotation marks.

q. In s. ERC 14.04 (3), the term "ss." should be inserted before the reference to "ERC 18.06 to 18.08."

r. Both ss. ERC 15.02 (5) and 15.03 (5) need titles.

s. In s. ERC 16.03 (2), an introduction should precede the listed paragraphs. [See also s. ERC 16.06 (2).]

t. In s. ERC 30.13 (1), because the term "arbitrator" is used throughout the entire chapter, the definition ought to be moved to the front of the chapter.

u. In s. ERC 30.18, the "(1)" should be deleted as there are no additional subunits. In addition, the term "s. 788" should be changed to "ch. 788." In addition, the phrase "are as provided" should be changed to "shall be as provided."

v. In s. ERC 32.15 (12), the second half of the provision seems to be misplaced. It would seem that the requirements for arbitrators to issue their decisions within 60 days or be replaced would more logically fall in ch. ERC 50. The rule should be reviewed for the proper placement of the arbitrator disqualification provisions.

w. The title to s. ERC 33.13 should use bold letters in upper and lower case lettering. [See s. 1.05 (2) (b), Manual.]

x. In s. ERC 33.18, the phrase "refers to" should be replaced by the word "means."

y. The material in s. ERC 33.19 (12), relating to the disqualification of certain arbitrators, seems to be misplaced and would, it appears, be more appropriately placed in ch. ERC 50.

z. In the Appendix to ch. ERC 33, Form A, it seems that the form would be easier to use if the numbered provisions were actually identified as "steps." In other words, the paragraph numbered "1" should be renumbered as "Step 1," and so on.

aa. There is no indication in the general treatment clause submitted with the rule that chs. ERC 40 to 43 are amended, renumbered, or recreated. However, the summary to the rule says that these provisions are renumbered. There is no treatment clause contained in the rule that shows that these chapters are renumbered from any specific provision. In addition, if, as the summary suggests, the provisions of ch. ERC 40 to 43 have been pre-empted by federal law, is it really necessary to include them in the administrative code, and if so, is it necessary to include them in four separate chapters of the administrative code? If it is necessary to include them in the administrative code it would seem to make sense to combine them into one properly drafted chapter. It would also be helpful to explain in a note that the provisions are pre-empted and include a citation to the relevant case or statutory law.

ab. In s. ERC 50.02 (1) (c), the material after the colon should be set off as separate subdivisions and numbered accordingly.

ac. In s. ERC 50.02 (2), all of the paragraphs should be written as complete sentences. In addition, the material after the colon in par. (a) should be divided into separate subdivisions and numbered accordingly.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. ERC 1.01, and elsewhere throughout the rule, the rule uses the phrase "these rules" and similar phrases when referring, apparently, to other provisions of the rule-making order. This type of vague cross-reference is inappropriate. [See s. 1.07, Manual.] The rule needs to use specific cross-references in order to assist readers in navigating the various procedures being established. Also, a reference to a series of provisions should be connected by the word "to" rather than by a hyphen.

b. In s. ERC 1.02, the reference to "ch. ERC 1" should be changed to "this chapter." [See s. 1.07, Manual, for a discussion of internal and external cross-references.] Also, to what does the phrase "Each of the chapters" refer? [See, also, s. ERC 10.02.]

c. Section ERC 1.03 provides that any conflict between a general rule in ch. ERC 1 and a special rule in "another chapter," the special rule governs. However, it appears from the context of ch. ERC 1 and other provisions of the rule that ch. ERC 1 does not apply to actions under chs. ERC 10 to 19. Accordingly, the phrase "in another chapter" ought to be more specifically defined. In addition, s. ERC 1.03 is, in general, vaguely worded. To be more precise, it should be worded substantially as follows: "In any conflict between a provision of this chapter and a specific provision in chs. __ to __, the specific provision shall govern."

d. In s. ERC 2.02 (1), it appears that simply referring to s. 111.06, Stats., would be sufficient. In addition, "ss." should be "s."

e. In s. ERC 2.02 (7), the rule refers to "nothing in this rule." The term "this rule" should be made more specific to refer to a specific section, subsection, or chapter of the rule-making order. [See comment a., above.]

f. In s. ERC 2.04 (2) (c), the term "subds." should be inserted immediately before the reference to "1. and 2." [But see comment 2. h., above.] Doing so would eliminate the need to include the word "below" in the sentence. In addition, the phrase "under this chapter" should be added at the end of the sentence.

g. In s. ERC 2.05 (6) (b), the cross-reference should be to s. ERC 2.04 (2) (c) 2.

h. Section ERC 2.05 (10) provides that the parties to a proceeding may "waive any one or more of the procedural steps or decisions which would otherwise precede the issuance" of a final order. An appropriate cross-reference should be provided to the "procedural steps or decisions" which may be waived.

i. In the second to the last sentence in s. ERC 3.02 (2), the reference to s. ERC 3.02 (3), should simply be a reference to "sub. (3)."

j. In s. ERC 3.05 (4) (b) 1., the rule refers to s. 111.70 (4) (d), Stats. That section relates to determining bargaining representatives for certain public sector employees. However, ch. ERC 3, by its terms, involves such determinations involving employees of the private sector. Accordingly, it appears that the statutory reference is incorrect. The entirety of ch. ERC 3 should be reviewed to determine whether the references to s. 111.70 (4), Stats., are correct.

k. In s. ERC 3.07 (3) (b), the reference to "sub. (a)" should be a reference to "par. (a)."

l. Section ERC 3.07 (5) relates to, among other things, the cost of transcripts. It would seem appropriate for this provision to simply refer to s. ERC 1.08 (4) which specifies transcript fees.

m. In s. ERC 3.09 (1), the rule provides that the time within which the commission has directed an election to be conducted may be extended by the commission. The rule should be clarified to provide a cross-reference to indicate that the time within which the commission has directed an election to be conducted is done under s. ERC 3.08. Thus, the final sentence in sub. (1) could read as follows: "The time within which the commission has directed an election to be conducted under s. ERC 3.08 may be extended by the commission." Generally, the entire rule should be reviewed for appropriate use of specific cross-references as opposed to vague cross-references. For example, the rule often refers to "a petition" or "a stipulation." Where possible in such situations, the rule should refer to "a petition under par. __" or "a stipulation under s. ERC __."

n. Section ERC 3.12 (1) provides that the rules relating to the conduct of hearings on election petitions in ss. "ERC 3.05 (4) - 11.07" shall govern hearings on challenges or objections. It appears that the correct cross-reference should be to ss. "ERC 3.05 to 3.07."

o. Section ERC 4.08 (3) (b) 1. refers to "s. ERC 4.10 (2) (d)." That provision does not exist. It appears that the correct cross-reference should be to s. ERC 4.09 (2) (d). The statutory cross-reference also is incorrect.

p. Section ERC 4.10 (6) (b) refers to "s. ERC 4.10 (2) (b)." That provision does not exist. It appears that the appropriate cross-reference is to s. ERC 4.09 (2) (b). In addition, a comma should be inserted after the appropriate cross-reference.

q. Section ERC 8.12 (1) cross-references ss. "ERC 8.05 (4) - 26.07." It appears that the reference ought to be to ss. "ERC 8.05 to 8.07."

r. Section ERC 9.05 (2) (b) (intro.) indicates that prehearing discovery is not available in "Sec. 111.70 (4) (b), Stats., declaratory ruling proceedings." This appears to be an incorrect cross-reference. It appears that the correct cross-reference should be to s. 227.41 (2), Stats. In addition, the rule could be simplified by indicating that prehearing discovery is not available in a proceeding "under this chapter."

s. In s. ERC 11.02 (2), the reference to s. ERC 11.02 (3) should simply be a reference to "sub. (3)."

t. Section ERC 12.02 (6) (b) 1. refers to "respondents rights under s. 111.70, Stats." The rule should attempt to be more precise in its cross-references. Are there specific provisions in s. 111.70, Stats., that could help clarify which rights are being referred to?

u. In s. ERC 13.01, "ss." should be changed to "s."

v. In s. ERC 13.05, the notation ", Stats." should follow the statutory citation.

w. Why does the rule refer to s. 111.70 (4) (b), Stats., in s. ERC 19.05 (2) (b) (intro.), when that chapter deals with declaratory rulings under s. 227.41 (2), Stats.? A correct cross-reference should be provided.

x. Section ERC 19.06 refers to the receipt of a petition "under this section." It appears that this should be a reference to a petition under s. ERC 19.02.

y. Why does s. ERC 19.07 (2) 1. refer to s. 111.70 (4) (b), Stats.? It appears that it should refer to s. 227.41, Stats. In addition, the subunits of s. ERC 19.07 (2) should be renumbered as pars. (a) to (c) rather than subds. 1. to 3.

z. Section ERC 19.10 is vaguely worded. Instead of referring to a "s. 227.41 (2), Stats., declaratory ruling," the rule should refer to a "declaratory ruling issued under this chapter."

aa. In s. ERC 21.12 (1), it appears that the reference to s. ERC 11.07 should be to s. ERC 21.07.

ab. In s. ERC 22.02 (1), the term "ss." should be changed to "s."

ac. It appears that the reference in s. ERC 22.02 (3) and (6) (b) 1. to "s. 111. (2) (e)," Stats., should be a reference to "s. 111.84 (2) (e)."

ad. In s. ERC 22.02 (6) (b) 5., the phrase "under sub. (7)" should be inserted after the term "certain."

ae. In s. ERC 30.09 (1), the rule refers to a "timely objection." Is this an objection under s. ERC 30.10? If so, an appropriate cross-reference should be provided. In any event, the rule should be clarified.

af. In s. ERC 31.03 (3) (d), the reference to s. 111.70 (4) (jm), Stats., should conclude with a "4." rather than a "(4)." In addition, the second period at the end of the sentence should be deleted.

ag. In s. ERC 30.03 (2), the term "ss." should be replaced by the term "s."

ah. Section ERC 31.06 (3) contains an incorrect cross-reference to s. 111.70 (4) (jm) 4., Stats.

ai. In s. ERC 31.12 (2), the rule requires the arbitrator to give appropriate weight to the factors set forth in s. 111.70 (4) (jm) 3. However, that provision does not appear to require any weight to be given to any factor. The rule should be clarified.

aj. In s. ERC 32.13 (5), it appears that the phrase "sub. (3)" at the beginning of the first sentence should be replaced by the phrase "subs. (3) and (4)."

ak. In s. ERC 33.10 (4), the reference to s. ERC 33.10 (8), should be a reference merely to "sub. (8)."

al. Section ERC 33.12 (2) refers to an informal investigation procedure as set forth in s. ERC 32.11 (2). It appears that the correct cross-reference should be to s. ERC 33.11 (2).

am. Section ERC 33.16 (2) refers to ch. ERC 34. However, that chapter does not appear to exist. A correct cross-reference should be provided.

an. Section ERC 50.06 (3) makes numerous references to various types of proceedings that an arbitrator or fact-finder may participate in. However, it makes no mention of the corresponding administrative rule provisions to which those proceedings relate. It should. Finally, all of the statutory citations should be followed by the notation ", Stats."

ao. If any new forms are required by the rule, the requirements of s. 227.14 (3), Stats., should be met.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Definitions are important for readers of a rule in that they serve to achieve consistency and clarity of terminology in a rule. [See s. 1.01 (7), Manual]. Although the rule makes some use of definitions, their use could be far more extensive. For example, terms such as "Wisconsin Employment Peace Act," "State Employment Labor Relations Act," and "Municipal Employment Relations Act" should all be defined in a definition section of the rule. In addition, in s. ERC 3.07 (3) (a), the rule provides that a party has the right to appear in person or by counsel or by "any other qualified representative." What are other qualified representatives? The term should be defined. The entire rule should be reviewed for adequate use of definitions.

b. The rule should avoid the use of parenthetical phrases. [See, for example, s. ERC 1.06 (1), and numerous other provisions.] If certain material is important to the thought or concept expressed in the rule, the material should be set apart with commas, not parentheses. Otherwise, the material should be placed in an explanatory note immediately following the rule if it is necessary to the rule. Also, "(s)" should not be added to a word to indicate that the word may be singular or plural. Use the singular form whenever possible. [See s. 1.01 (6), Manual and ss. 227.27 (1) and 990.001 (1), Stats.]

c. Part of the stated intent behind the recodification of the rules of the commission is to make the language less legalistic. This goal can be furthered by replacing phrases such as "in its discretion" and "shall have the authority to" with the appropriate use of the word "may." Similarly, phrases such as "shall have the responsibility to" can be replaced with the appropriate use of the word "shall."

d. The rule frequently refers to the "business hours" of the commission. In some instances, the actual hours are stated in the rule and in other places the reader is left to wonder what those hours might be. Again, a definition of this term in a section or chapter devoted to definitions applicable throughout the rules would be useful.

e. In s. ERC 1.06 (1) and (2), the hyphens between the normal business hours and the days of the week should be replaced by the word "to." [See s. 1.01 (9) (d), Manual.]

f. Generally, all subunits of a rule should end with a period, rather than a comma or semicolon or the word "and" or "or," except for introductory material which ends with a colon. This facilitates insertion or deletion of subunits in the future without having to move the word "and" or "or" in the next to the last subunit. In addition, when a unit of a rule is divided into subunits, and the subunits are preceded by an introduction, the introductory material always ends in a colon and leads into the subunits. It usually contains words like "all of the following" or "any of the following." Thus, s. ERC 1.07 (1) (intro.) should be rewritten substantially as follows: "Service of any document is completed when any of the following occur:". Each subunit should begin with a capital letter and the phrase "The document is." In addition, each subunit should end in a period and the word "or" after the semicolon in par. (e) should be deleted. The entirety of the rule should be reviewed for appropriate use of introductory language, punctuation, and capitalization in subunits of the rule. [See s. 1.03, Manual.]

g. In s. ERC 1.08 (3), the word "to" after the word "staff" should be deleted.

h. Generally, the rule should use active, versus passive, language whenever possible. For example, in s. ERC 2.02 (1), the rule provides that "a complaint is not filed unless it contains the required signature . . . ." The sentence should be rewritten substantially as follows: "The commission shall consider the complaint to be filed when a completed complaint is received by the commission at its Madison office during normal business hours."

i. Section ERC 2.02 (1) provides that a complaint and a fee may be transmitted to the commission by certain specific means and by "other means" that the commission may from time to time approve as communication technology evolves. How will those other means be approved? Will a notice be published in the administrative register when a new means of transmission is approved? Ordinarily, such policy decisions of an agency should be promulgated as rules. If the other means will be promulgated as rules in the future, it would not appear to be necessary to include the above phrase in the rules. In any event, the rule should be clarified in terms of the future approval of other means of communication technology.

j. In s. ERC 2.02 (2) (a), the rule uses the sentence "fax numbers and email addresses shall be included, if available." The rule should be clarified so that it is clear that the fax numbers and email addresses that are sought are those of the complainant, the respondent, or other relevant individuals. For example, in sub. (2) (a), the sentence could be rewritten as follows: "Fax numbers and email addresses of the complainant shall be included in the complaint, if available."

k. In s. ERC 2.02 (4), in the second sentence, the word "a" should be inserted between the words "amend" and "complaint."

l. In s. ERC 2.02 (6) (b) 1., "a class 3 proceedings" should be replaced by "class 3 proceedings."

m. Section ERC 2.02 (6) (b) 5. and (7), both relate to motions to make a complaint more definite and certain. Subdivision 5. indicates that the notice of a hearing must contain a statement which indicates that a motion to make the complaint more definite and certain must be received by the commission no later than 30 days after the date the notice of the hearing was issued. Subsection (7) indicates that the motion must be filed within 30 days after the date the complaint was placed in the mail or otherwise served on the respondent. It would seem that a consistent point in time would make a better reference and would serve to clarify the rule.

n. In s. 2.02 (7), a period should be placed at the end of the second sentence.

o. In s. ERC 2.03 (4), the rule refers to a respondent being able to amend the answer "on the terms and within the period established by the commission or examiner." Where are the terms and period established? Is this done in the motion that the commission or examiner must grant? The rule should be clarified.

p. In s. ERC 2.04 (1) (a), the rule requires that any statement opposing a motion must conform to "the same requirements." Which requirements are being referred to? If it is the

requirement specified in par. (a), a specific cross-reference to "this paragraph" should be included.

q. In s. ERC 2.04 (2) (c) 2. (intro.), the phrase "to whom any of the following apply" should be inserted prior to the colon. Additionally, in subd. 1. d., a cross-reference should be provided to more precisely identify the privilege that is required to be waived.

r. Generally, the rule should avoid the use of the negative subject with an affirmative "shall." For example, in s. ERC 2.04 (2) (f), the phrase "a motion to dismiss shall not be granted . . ." should be changed to "a motion to dismiss may not be granted . . . ." [See s. 1.01 (2), Manual.]

s. Section ERC 2.05 (2) provides that a hearing may be held by the commission or by an examiner. However, it is not clear from the rule who determines who will conduct the hearing and for what reasons the commission or an examiner may be selected to do so. The rule should clarify this issue.

t. In s. ERC 2.05 (3) (b), the reference to "sub. (a)" should be a reference to "par. (a)." In addition, the term "cannot" should be changed to the term "may not."

u. In s. ERC 2.05 (3) (c), the rule uses the term "recuse." Since this is ordinarily considered a legal term, it is suggested that the term be replaced by the term "refrain." If, however, the term "recuse" is desired, it is suggested that the term be used with the appropriate pronoun. For example, commission members and examiners shall "recuse themselves" from participation and a commission member or examiner shall "recuse himself or herself" from further participation. Also, the term "automatically" should be deleted. The phrase "or its appearance" in the second sentence should be replaced by the phrase "or the appearance of partiality."

v. In s. ERC 2.05 (6) (c), all of the material after the first sentence can be deleted as the first sentence sufficiently directs readers to the provisions of s. 227.45, Stats. [See s. 1.08, Manual.]

w. The titles in s. ERC 2.05 (6) (e) 1. to 3. should be enclosed in single quotation marks. [See s. 1.05 (2) (e), Manual.]

x. In s. ERC 2.05 (6) (e), the rule purports to regulate the issuance of a subpoena by the commission or an examiner. However, in subd. 1., the rule refers, multiple times, to an "order or subpoena." Since the provision does not address an order, the provision should only refer to a subpoena. In subd. 3., the term "subds." should be inserted before the reference to "1. or 2." in the first sentence. Doing so would eliminate the need to include the word "above."

y. Section ERC 2.05 (10) should end in a period.

z. In s. ERC 2.06 (1), the rule requires the commission or examiner to issue written findings of fact, conclusions of law and an order, which must be made available to the public through the commission website and in other commission publications. First, are the written

findings of fact, conclusions of law and order to be sent or served upon the parties? If so, the rule should be clarified. Second, in what other commission publications will the findings of fact, conclusions of law and order be made available? The rule should be clarified in the substantive text or in a note.

aa. In s. ERC 2.08, the phrase "by operation of law" is unnecessary and should be deleted.

ab. Section ERC 2.10 (1) provides that a petition for a rehearing is not a prerequisite for appeal or review. However, the rule neither appears to address what the prerequisites are for an appeal or a review, nor does it make any other mention of an appeal or a review. Readers of the rule are left with no guidance or direction on how to appeal or review a decision of the commission or examiner. The rule should be clarified accordingly or a note to the rule should be added. In addition, the first sentence of sub. (1) appears to be misplaced, especially in light of the fact that no further mention is made of an appeal or a review. If a provision is added regarding an appeal or review, the first sentence of sub. (1) could be added to it and modified to indicate that a person need not first file a petition for a rehearing before filing an appeal or a review.

ac. In s. ERC 2.10 (3) (a) and (b), the word "Some" should be changed to the word "A."

ad. In s. ERC 2.10 (4), the rule indicates that parties may file replies to the petition. Must the replies be served on the petitioning party? If so, the rule should indicate that requirement.

ae. In s. ERC 3.04 (2), the rule describes certain aspects of a stipulation for an election. However, the second sentence indicates that "a petition" must meet certain requirements before it is considered to be filed. It appears that the reference to a "petition" should be to a "stipulation."

af. The second sentence of s. ERC 3.05 (2) (b) should be rewritten substantially as follows: "No party, other than the petitioner, may receive a copy of, or examine, the showing of interest."

ag. In s. ERC 3.05 (3), the rule uses the phrase "if and when" and "if and as." The meaning of these phrases are not clear in the context of the rule. It appears that in both instances the phrase "if and" could be deleted and the apparent intent of the rule would be clearer.

ah. Section ERC 3.06 (2) (a) makes reference to a "10% showing of interest." The term "showing of interest" is not defined in the rule. Thus, at a minimum, s. ERC 3.06 (2) (a) should refer to a showing of interest under s. ERC 3.02 (3).

ai. In s. ERC 3.06 (2) (b) (intro.), the phrase "as in any class 1 proceeding" is not needed and should be deleted. Also, the phrase "shall have the right to" should be replaced by the word "may."

aj. Section ERC 3.09 (4) provides that challenged ballots shall be impounded. However, it is not clear whether those ballots are to be counted prior to impoundment. Further provisions in the rule seem to indicate that these ballots are not counted. However, the rule should be clarified accordingly.

ak. In s. ERC 3.09 (6), the second sentence refers to an "eligibility date." What date is this? Can an appropriate cross-reference be provided to help clarify the rule?

al. In s. ERC 4.04 (3), the rule indicates that a petition filed in paper form must include a total of two copies. The phrase "a total of two copies" is vague. Does this mean the petition and one copy, which would equal a total of two copies? Alternatively, does the phrase mean that a petition and two copies of the petition must be filed with the commission? The rule should be clarified.

am. In s. ERC 4.04 (4) (g), the rule requires a petition to include a statement that reasonable grounds exist to believe that authorization of an all union agreement is not favored. Does this require that the reasonable grounds be stated in the petition? The rule should be clarified.

an. Section ERC 4.05 (5) is difficult to understand. What are the "procedures following a referendum directed as the result of a hearing conducted after the filing of a petition for a referendum"? Can an appropriate cross-reference be provided?

ao. In s. ERC 4.06 (1), the word "the" should be inserted before the second occurrence of of the term "all union."

ap. In s. ERC 4.10 (3) (b), should the word "may" be replaced by the word "shall"?

aq. In s. ERC 4.10 (4) (intro.), the phrase "shall have the authority to take the following action" should be replaced by the phrase "may do all of the following."

ar. In s. ERC 4.12 (1), the word "an" before the word "referendum" should be changed to the term "a."

as. In s. ERC 4.14 (1), the first sentence refers to the tally of ballots having "been furnished." To whom must the tally of ballots be furnished? It would appear that the tally of ballots must be furnished to the parties, but the rule does not explicitly state that fact. In any event, the rule should be clarified.

at. Section ERC 4.16 (1) provides that a person may file a petition for a rehearing within 20 days after service of the order. However, there does not appear to be a stated requirement that the order be served upon the party. The rule should be clarified.

au. Section ERC 4.16 (2) provides that an order shall take effect on the date established by the commission and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law. First, what petition is being referred to? Is this a petition under sub. (1)? The rule should be clarified. Second, since the term "or" is

used, is it to be inferred that even if a petition is granted, an order might stay in effect? Or is the rule's intent to be that if a petition is filed and it is granted, the order is suspended, but if no petition is filed, the order is suspended when the commission, on its own motion, decides to supersede, modify or set aside the order? The rule should be clarified.

av. In s. ERC 4.16 (3) (c), since it seems unlikely that new evidence, by itself, will reverse or modify an order, it is suggested that the first phrase of the paragraph be rewritten substantially as follows: "The discovery of new evidence which is sufficiently strong to cause the commission to reverse or modify the order . . . ."

aw. The title to ch. ERC 5 indicates that it governs arbitration of private sector grievance disputes, as does the scope statement in s. ERC 5.01. However, s. ERC 5.02, refers to the interpretation or application of a collective bargaining agreement affecting the terms and conditions "of state employment in Wisconsin." Does the chapter apply to public or private sector employment? The rule should be clarified.

ax. Section ERC 5.04 (1) is confusing in that it refers to "one party" and "the other party." Efforts should be made to clarify the provision, perhaps by referring to the first party as the "initiating party" and the second party as the "responding" or "secondary party." In any event, the rule should be clarified.

ay. In s. ERC 5.04 (5), the first two sentences should be rewritten substantially as follows: "Grievance awards issued by commission-employed arbitrators shall be made available to the public by the commission through the commission website and in commission publications, except that grievance awards may not be made public if doing so would reveal a party's trade secrets." In addition, in the third sentence the phrase "can be communicated" should be changed to "may be communicated."

az. In s. ERC 5.07 (1), the text of the provision should make clear that the commission action is based on a request for an ad hoc arbitrator. Although the title indicates this intent, the title cannot be relied upon for substantive meaning.

ba. In s. ERC 5.09, the last sentence indicates that grievance awards are "ordinarily" made available to the public. That term should be replaced by either the term "shall" or "may."

bb. In s. ERC 6.04 (1), the second clause of the last sentence should be deleted. The first clause makes it clear that the filing fee is refundable only in the event of the other party's nonacquiescence to mediation. That obviates the need for the second clause.

bc. In s. ERC 7.02 (3) (a), the first comma should be replaced by the term "and."

bd. In s. ERC 7.07 (5), the rule requires that certain hearings be stenographically transcribed. Who is responsible for obtaining and providing a court reporter to do the transcription? The rule should be clarified.

be. In s. ERC 7.07 (6) (b), a comma should be inserted before the word "witnesses."

bf. In s. ERC 8.06 (2) (b) 1., and in similar provisions throughout the rule, what does it mean for a witness to be "beyond reach of the subpoena"? Does this mean the person is not subject to the jurisdiction of the commission? Is something else intended? The rule should be clarified.

bg. In s. ERC 9.02 (1), the phrase "commissioner issuance of" should be replaced by the phrase "that the commission issue."

bh. Section ERC 9.03 (1) refers to "the party or parties." Who are these parties? The rule should be clarified. For example, could the provision be clarified by adding the phrase "identified in the petition under s. ERC 9.02 (3)"?

bi. In s. ERC 9.06, the rule requires that "within a reasonable time" after receipt of a petition, the commission must take certain action. What is a reasonable time? The rule should be clarified.

bj. Section ERC 10.05 provides that in certain cases the commission may remove or transfer any proceeding before an examiner. To where or to whom are the proceedings to be transferred? Also, the last sentence refers to "several subsections" of a particular statute. Those "several subsections" should be more clearly specified.

bk. In s. ERC 10.06 (4), the rule requires that documents filed with the commission must identify who has been served with a copy. Does this mean that copies of documents must be served on various parties prior to filing with the commission? If so, it should be clearly stated in the rule. In any event, the rule should be clarified.

bl. Section ERC 11.05 (2) (b) provides that the commission shall "administratively determine" the sufficiency of certain documents. What does it mean to "administratively determine"? What is the distinction between the requirement to "administratively determine" and to "determine" in s. ERC 11.05 (2) (intro.)? The rule should be clarified.

bm. Section ERC 12.02 (1) refers to a "party in interest." What is a party in interest? Is this different than a "party" which is referred to throughout the rest of the rule? The rule should be clarified or consistent terminology should be used throughout.

bn. In s. ERC 12.10 (6), the rule indicates that if the commission finds that the original decision or order was in any respect unlawful or unreasonable, it may reverse, change or modify the order. Is it the intent of the rule to authorize a reversal or modification, or should the commission be required to reverse or modify an unlawful or unreasonable order? If the latter is the case, the word "may" should be changed to "shall."

bo. In s. ERC 13.04 (4), the term "respectively" in the last sentence should be deleted.

bp. In s. ERC 13.05, the period after the word "applicable" in the last sentence should be deleted.

bq. It might be helpful to mention in the title to ch. ERC 14 and in s. ERC 14.01, that s. 111.70 (4) (c) 3., as well as ch. ERC 14, only applies to certain law enforcement and firefighting personnel.

br. It is noted that the statutes governing "fact-finding" hyphenate that term. It is suggested that ch. ERC 14 do the same.

bs. Section ERC 14.04 (1) provides that an investigation shall consist of either an informal investigation or a formal hearing, or both. However, by their terms, subs. (2) and (3) imply that each must be done. The rule should be clarified to make it clear when subs. (2) and (3) apply.

bt. In s. ERC 14.04 (2), is the commission required to issue a report? The rule requires an investigator to issue a report but not the commission that conducts an informal investigation. The rule should be clarified. In sub. (3), the notation "ss." should precede the cross reference.

bu. In s. ERC 14.07 (4), the rule uses the term "and/or." The rule should avoid the use of slashed alternatives. Instead the rule should determine whether the sentence means "and," "or," or both, and use the appropriate word or phrase. [See s. 1.01 (9) (a), Manual.]

bv. In s. ERC 14.09, the phrase "but not limited to" is unnecessary when used with the word "including." Also, the last sentence refers to a "tripartite" panel. What is this? Is this the three-member fact-finding board referred to in s. ERC 14.06 (3)? The rule should be clarified and consistent terminology should be used throughout.

bw. In s. ERC 14.11 (3) (d), the phrase "each and every" is redundant. Use the term "each."

bx. In s. ERC 15.02 (4) (c), the rule uses the phrase "said unit." The rule should avoid the use of words such as "said" and "such" in place of an article. Thus, the rule should be revised to provide a reference to "the unit."

by. In s. ERC 15.05, the term "and" after the word "involved" should be deleted as should the word "containing" after the last use of the word "and."

bz. Section ERC 15.07 (2) (b) provides that parties other than the petitioner are not entitled to a copy of the showing of interest. Is the rule referring to parties to the action or anybody other than the petitioner? In other words, is the showing of interest not subject to inspection by the general public? The rule should be clarified.

ca. In the second to the last sentence in s. ERC 15.07 (4) (b), the term "held" or the phrase "scheduled to be held" should be inserted before the phrase "not less than 10 days." In addition, is there any maximum time frame that applies to when a hearing shall be held? If so, the rule should be clarified. Finally, in the first sentence, the term "Sec." should be changed to "s."

cb. In s. ERC 15.09 (6) (b), a comma should be inserted before the word "witnesses."

cc. In s. ERC 15.12 (2) (a), one of the two periods at the end of the sentence should be deleted.

cd. In s. ERC 16.01, the term “ss.” should be “s.”

ce. Who is it that can file a request for a commission-employed arbitrator under s. ERC 16.03? The rule does not appear to make this clear.

cf. In s. ERC 16.09, the rule uses the term “ad hoc arbitrator” and “ad hoc roster arbitrators.” Are these terms referring to different individuals? If not, consistent terms should be used.

cg. In s. ERC 17.05 (1), a comma should be inserted after the word “processing” in the last sentence.

ch. In s. ERC 18.05 (4), the phrase “, by physical delivery, mail or fax” should be inserted after the word “party” at the end of the first sentence. Doing so would eliminate the need for the last sentence. In addition, a comma should be inserted after the second use of the term “stipulation” and after the term “commission” in the first sentence.

ci. In s. ERC 19.03 (3) (intro.), the phrase “to a petition under s. ERC 19.02” should be included after the word “response.”

cj. Section ERC 19.06 deals with what the commission must do upon receipt of a petition. Section ERC 19.07 (1) refers to the commission or examiner taking certain action after a petition is filed. How do these two provisions relate to each other? In other words, are the “further proceedings” referred to in s. ERC 19.07 (1) the same as the “scheduling of the matter for a hearing” referred to in s. ERC 19.06? The rule should be clarified.

ck. Is s. ERC 20.07 (2) necessary in light of the existence of s. ERC 20.06 (3)?

cl. In the fifth sentence of s. ERC 21.06 (1) (a), a comma should be inserted after the term “motions” and the term “them.”

cm. In s. ERC 22.02 (4), the word “the” should be inserted after the word “amend” in the second sentence.

cn. In s. ERC 22.02 (6) (b) 1., the phrase in the next to the last sentence that reads “concerning complaints alleging a violation of s. 111. (2) (e), Stats.,” should be eliminated. If it is not eliminated, the correct cross-reference should be inserted.

co. Section ERC 23.04 (1) indicates that a request for a commission-employed arbitrator may request that the commission supply a panel listing persons to serve as an arbitrator. If that is done, how can there be a designated arbitrator as referred to in s. ERC 23.04 (1)? The rule should be clarified.

cp. In s. ERC 24.04, why must a party oppose the right of the initiating party to proceed to mediation? Is it sufficient for the party to oppose mediation? The rule should be clarified.

cq. In s. ERC 25.08 (3), the phrase "of the recommendations" should be inserted after the word "copy."

cr. Section ERC 28.02 (1) indicates that a person may file a petition for the issuance of a declaratory ruling about the applicability to any person, property, or state of facts of any rule or statute enforced by the commission. However, s. ERC 28.01 indicates that ch. ERC 28 concerns declaratory rulings concerning the State Employment Labor Relations Act. It would appear that the scope of s. ERC 28.02 (1) should be narrowed to encompass the scope of the chapter.

cs. In s. ERC 28.10, the beginning of the sentence should be rewritten to provide as follows: "A declaratory ruling issued under this chapter . . . ."

ct. In s. ERC 30.01, the word "units" should be inserted after the term "bargaining" in the first sentence. In addition, in the second sentence the phrase "as shown" should be replaced by the term "determined."

cu. In s. ERC 30.07, in the last sentence, the term "should" should be replaced by the term "shall" and the word "can" should be replaced by the word "may."

cv. Section ERC 30.11 (4) relates to the procedures following the issuance and service of a declaratory ruling. However, the rule does not seem to address the actual procedure for issuing and service of such a ruling. Is there one? If so, what is the procedure?

cw. In s. ERC 30.13 (3), the phrase "of the arbitrator" should be inserted after the term "appointment."

cx. In s. ERC 30.16, the phrase "are made available" in the last sentence should be changed to "shall be made available." In addition, the phrase "board of arbitration or the single arbitrator" could be replaced by the term "arbitrator." It is also noted that, some provisions of the chapter use the term "tripartite arbitration panel" and others use the term "board of arbitration." Are these the same terms? If so, consistent terminology should be used. If not, the rule should explain the distinction between the two terms.

cy. In s. ERC 31.03 (1), it appears necessary to limit the term "municipal employees" to those employees in a law enforcement bargaining unit in certain populous cities.

cz. In s. ERC 32.03 (3) (intro.), the phrase "the notice shall be on a form provided by the commission or on a facsimile" is not needed since it appears in s. ERC 32.03 (2). Thus, the introductory material can simply read: "The notice required under sub. (2) shall contain all of the following information:".

da. In s. ERC 32.05 (2), the phrase "for the arbitration" should be inserted after the last use of the word "paid" at the end of the third sentence.

db. In s. ERC 32.11 (1) (b), it appears that the term "related" in the first sentence should be "relates."

dc. In s. ERC 32.15 (2), the term "also" at the beginning of the first sentence should be deleted.

dd. In s. ERC 32.15 (3), the rule requires "any signer" of a "request" to serve copies of the request on the parties involved. Does this mean that each signer of a request has to serve copies to the parties or that at least one signer of the request has to provide a copy of the request to the other parties? The rule should be clarified.

de. In s. ERC 32.15 (9) (intro.), the term "same" should be replaced by the phrase "the hearing."

df. Section ERC 33.03 requires that a collective bargaining agreement be for a certain term. What collective bargaining agreements does this apply to? The rule should be made more definite. It should also be made clear throughout ch. ERC 33 that the chapter only relates to collective bargaining agreements affecting school district professional employees. Although the scope statement for the chapter indicates this fact, the absence of any definitions or specific cross-references in the chapter make it difficult for readers to determine who the chapter actually applies to.

dg. In s. ERC 33.10 (3) (a) 2., the phrase "this agreement" should be changed to "the agreement."

dh. The third sentence of s. ERC 33.11 (3) contains two uses of the phrase "except that" in succession. One of these phrases should be deleted.

di. In s. ERC 33.13 (2), what is meant by the phrase "for the period"? Is this the period covered by the qualified economic offer? The rule should be clarified.

dj. In s. ERC 33.19 (6), the phrase in the second sentence beginning with the word "who" and ending with the word "suggestions" should not be set off by commas.

dk. In Step 4 of Form A of the appendix to ch. ERC 33, the term "of" should be inserted after "1.7%."

dl. In s. ERC 50.02 (intro.), the term "is" at the beginning of the first sentence should be replaced by the term "shall be." In addition, the materials set off by dashes should not be so set off. Instead, the first sentence should be rewritten substantially as follows: "The roster of ad hoc arbitrators and fact finders shall be limited to individuals who are competent and willing to participate in grievance arbitration, interest arbitration and fact finding." It would also be appropriate to provide cross-references to the relevant proceedings in the rules.

dm. In s. ERC 50.02 (1) (b) (intro.), the word "must" should be replaced by the word "shall" and the period at the end should be replaced by a colon.

dn. In s. ERC 50.02 (1) (c), both uses of the phrase "must not" should be replaced by the phrase "may not." In addition, the phrase "but not limited to" after the term "including" should be deleted.

do. Section ERC 50.02 (3) (a) uses the term "ad hoc arbitrator." However, other provisions in the rule just use the term "arbitrator." What is the difference? The rule should be clarified. [Also, see comment a., above, relating to the use of definitions.]

dp. In s. ERC 50.02 (3) (d), the provision should be rewritten substantially as follows: "The commission may consider any combination of experience identified in pars. (a) to (c) and other relevant experience."

dq. In s. ERC 50.02 (3) (e), the phrase "s. 111.71 (5), Stats., training" should be replaced by the phrase "training pursuant to s. 111.71 (5), Stats." In addition, what is a "competent evaluation authority"? The rule should be clarified. Finally, in the last sentence, the word "is" should be replaced by the word "shall."

dr. In s. ERC 50.03 (1), the use of the phrase "are expected to" in several places should be replaced by the word "shall."

ds. The beginning of the first sentence of s. ERC 50.03 (3) should be rewritten substantially as follows: "No candidate may attempt to influence the commission or staff members . . . ."

dt. The meaning of the last sentence of s. ERC 50.04 (1) is unclear. It should be clarified. In fact, the entire provision should be rewritten in the affirmative voice.

du. In s. ERC 50.04 (4), the term "individual" should be replaced by the term "roster member."

dv. In s. ERC 50.05 (1), the phrase "be required to" should be deleted.

dw. In s. ERC 50.05 (3), the term "must" should be replaced by the term "shall."